IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1894 of 2004

with

FIRST APPEAL No 1940 of 2004

with

CIVIL APPLICATION No 6939 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRESIDENT / CHIEF OFFICER

Versus

VARSHABEN SHANTILAL DARJI

Appearance:

1. First Appeal No. 1894 of 2004

MR RN SHAH for Appellant

MR MAHENDRA K PATEL for Respondents No. 1-3

..... for Respondent No. 4

MS MAYA S DESAI for Respondents No. 5-6

2. First Appeal No.1940 of 2004
MS MAYA S DESAI for Appellants
MR MAHENDRA K PATEL for Respondents No. 1-3
..... for Respondent No. 4
MR RN SHAH for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 20/04/2005

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

Both these appeals are disposed of by this common judgment as they arise out of the impugned judgment and decree dated 20th January, 2004 passed by the learned 3rd Joint Civil Judge (S.D.), Godhra in Special Civil Suit No.110/99 filed by the respondents - plaintiffs Varshaben Shantilal Darji on her behalf and on behalf of her minor son Priteshkumar Shantilal and minor daughter Hetaben Shantilal whereby the learned Judge partly decreed the suit of the plaintiffs and ordered the appellants of both the appeals to pay jointly a sum of Rs.7,00,500/- together with interest at the rate of 9% per annum from the date of filing of the suit i.e. 4th August, 1999 till its realisation.

2. Shantilal Poonamchand Darji was doing tailoring work at Halol. He was residing in a rented premises of Shri Praphulchandra Jivanlal Shah at Halol. It was an old house having iron sheets fixed on the roof supported by iron wire. There was an open land 'vada' where one iron wire was fixed on the wall of the latrine which was also connected with the iron sheet of the roof. There was one electric connection from one street-light pole no.305 which was supported with the iron wire. The connection was given by the Deputy Executive Engineer and the Chief Engineer of the Gujarat Electricity Board without plastic pipes - insulators for the supporting wire. There was no earthing wire in the street-light pole passing from the mercury lamp and iron clamp was fixed on the street-light pole.

2.1 On the fateful day of the incident i.e. 13th June, 1998 at about 6.30 a.m., Shantilal came to the 'vada' and came in contact with the live iron wire and due to electrocution, he died there and there, at a young

age of only 31 leaving behind his widow Varshaben - plaintiff no.1 and two minor children - minor son Priteshkumar, aged 4 and minor daughter Hetaben, aged 1. The plaintiffs filed suit for damages/compensation against the Deputy Executive Engineer and Chief Engineer of Gujarat Electricity Board by joining them as defendants no.1 and 2 and the President/Chief Officer of Halol Nagarpalika as defendant no.3 and claimed Rs.15,00,000/- for the pain, shock, suffering and loss of future income as the dependants of deceased Shantilal. Defendants no.1 and 2 filed joint written statement at Exh.41 denying all the allegations made by the plaintiffs against them and stated that deceased Shantilal died due to his own negligence and, therefore, they were not liable to pay anything to the plaintiffs. On behalf of defendant no.3 - Nagarpalika, written statement at Exh.27 was filed wherein it was contended that street-light pole was properly maintained by them and it was the duty of the Gujarat Electricity Board and its officers i.e. defendants no.1 and 2 to maintain street-light poles. It was also contended that in any case, they were not liable to pay any compensation.

3. In support of their rival contentions, the plaintiffs and defendants led oral as well as documentary evidence before the Trial Court and after considering the oral as well as documentary evidence led by the parties, the learned Trial Judge came to the conclusion that the plaintiffs proved that deceased Shantilal died due to electrocution because of the negligence of the Gujarat Electricity Board as well as the Nagarpalika. However, he was of the opinion that the plaintiffs would be entitled to recover in all, Rs.7,00,500/- jointly from all the defendants together with interest at the rate of 9% per annum from the date of filing of the suit i.e. 4th August, 1999 till the realisation of the amount and not Rs.15,00,000/-, claimed by the plaintiffs in their suit. This judgment and decree passed by the Trial Court is challenged by Halol Nagarpalika by way of above First Appeal No.1894 of 2004 and by the Gujarat Electricity Board by way of First Appeal No.1940 of 2004.

4. On behalf of Halol Nagarpalika, learned counsel Shri R.N. Shah for the appellant - Nagarpalika vehemently submitted that the learned Trial Judge was wrong in passing the decree against the appellant Nagarpalika. Relying on the judgment of the Hon'ble Supreme Court in the case of M.P. ELECTRICITY BOARD vs. SHAIL KUMAR AND OTHERS reported in AIR 2002 Supreme Court Page 551, Mr. Shah submitted that at the most, Gujarat Electricity Board could be held liable and not the

Nagarpalika. Alternatively, he submitted that in any case, if this court comes to the conclusion that the appellant - Nagarpalika, being a statutory body, is also liable to pay, then their total liability would not be more than Rs.4,00,000/- with interest thereon at the rate of 9% per annum, as awarded by the Trial Court and not Rs.7,00,500/-. However, Ms. Maya Desai for the appellant - Gujarat Electricity Board submitted that there was no negligence on the part of the appellant Board and deceased Shantilal died due to his own negligence and therefore, the judgment and decree passed by the Trial Court awarding Rs.7,00,500/- be quashed and set aside. In the alternative, she submitted that at the most, the Trial Court could have awarded, in all, Rs.4,00,000/- with interest at the rate of 9% per annum from the date of the suit and not Rs.7,00,500/- as awarded by the Trial Court. However, learned counsel Shri Mahendra Patel appearing for the respondents plaintiffs submitted that, in any case, the court should not award less than Rs.5,00,000/-, in all, to the respondents - plaintiffs with interest at the rate of 9% per annum on it from the date of the suit but later on, he left it the the discretion of the court to award reasonable amount to the respondents - plaintiffs.

5. Having heard the learned counsel for the parties and having carefully gone through the oral as well as documentary evidence led by the parties before the Trial Court and having carefully gone through the reasons assigned by the learned Judge in his judgment, we are of the considered opinion that the learned Judge has rightly come to the conclusion that there was no negligence on the part of deceased Shantilal. Therefore, all the defendants were liable to pay jointly. However, the question is what amount should be awarded?

6. Having carefully gone through the evidence led by the parties on the point of income of the deceased and the consensus arrived at by the learned counsel for the parties, when it was left to this court, we are of the considered opinion that Rs.4,00,000/- with interest at the rate of 9% per annum from the date of the suit till its realisation would be just and proper.

7. In view of the above discussion, both these appeals are partly allowed and the impugned judgment and decree passed by the learned Trial Judge is partly modified and it is ordered that the appellants of both the appeals shall pay jointly, in equal proportion i.e. Rs.2,00,000/- (Rupees Two lakhs only) each with interest

at the rate of 9% per annum from the date of filing of the suit i.e. 4th August, 1999 till its realisation to the respondents - plaintiffs. They shall deposit the said amount before the Trial Court within eight weeks from today. The amount already deposited shall be adjusted. On depositing the said amount, the Trial Court shall disburse the amount as per its order and shall see to it that the amount awarded to the minors shall be deposited in the fixed deposit and be paid to them on their attaining majority.

No order on Civil Application for stay, in view of the order passed in the main appeal.

(B.J. Shethna, J.)

(M.C. Patel, J.)

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